U.S. Department of Homeland Security
20 Mass. Ave., N.W., Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

PUBLIC COPY

identifying data deleted to prevent clearly unwarranted invasion of personal privacy

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: OCT 01 2004

IN RE: Petitioner: [redacted]
Beneficiary:

PETITION: Immigrant Petition for Special Immigrant Religious Worker Pursuant to Section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), as described at Section 101(a)(27)(C) of the Act, 8 U.S.C. § 1101(a)(27)(C)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Marie Johnson

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be rejected.

The pettioner seeks classification as a special immigrant religious worker pursuant to section 203(b)(4) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(4), to perform services as a missionary for Granby Pentecostal Tabernacle. The director determined that the petitioner had not established that she had the requisite two years of continuous work experience as a missionary immediately preceding the filing date of the petition, or that the intending employer had extended a qualifying job offer.

We note that the Form I-360 petition identifies as the petitioner. However, part 9 of the Form I-360 was signed not by any church official, but rather by the alien beneficiary. By signing on this line, the alien affirmed, under penalty of perjury, the truth of the claims set forth in the petition. Thus, the alien beneficiary is the one who is legally responsible for the accuracy of the petition. The church's pastor, Al Royal, signed part 10 of the Form I-360, acknowledging that he prepared the form, but a signature on this line includes no such affirmation. Pastor Royal may have intended for the church to be the petitioner, but by omitting his signature from part 9 of the Form I-360, he has failed to take responsibility for the contents of the petition.

8 C.F.R. § 103.3(a)(1)(iii) states, in pertinent part:

> (B) *Meaning of affected party.* For purposes of this section and sections 103.4 and 103.5 of this part, *affected party* (in addition to the Service) means the person or entity with legal standing in a proceeding.

8 C.F.R. § 103.3(a)(2)(v) states:

> *Improperly filed appeal -- (A) Appeal filed by person or entity not entitled to file it -- (1) Rejection without refund of filing fee.* An appeal filed by a person or entity not entitled to file it must be rejected as improperly filed. In such a case, any filing fee the Service has accepted will not be refunded.

The appeal has not been filed by the petitioner, nor by any entity with legal standing in the proceeding, but rather by the petitioner's intending employer. Therefore, the appeal has not been properly filed, and must be rejected.

We acknowledge that the director mistakenly treated the church as the petitioner. At the same time, we note that, given the facts and evidence in the record, the appeal would have been dismissed even if it had been properly filed. The regulation at 8 C.F.R. § 204.5(m)(1) indicates that the "religious workers must have been performing the vocation, professional work, or other work continuously (either abroad or in the United States) for at least the two-year period immediately preceding the filing of the petition." 8 C.F.R. § 204.5(m)(3)(ii)(A) requires the petitioner to demonstrate that, immediately prior to the filing of the petition, the alien has the required two years of membership in the denomination and the required two years of experience in the religious vocation, professional religious work, or other religious work. The petition was filed on October 15, 2002. Therefore, the petitioner had to establish that she was continuously performing the duties of a missionary throughout the two years immediately prior to that date. The petitioner entered the United States on May 8, 2002, having been in Nigeria prior to that time. 8 C.F.R. § 204.5(m)(4) states that the petitioner must provide evidence to clearly indicate that the alien will not be solely dependent on supplemental employment or solicitation of funds for support.

In a letter accompanying the initial filing of the petition, states that the petitioner "has been offered a position as a missionary religious worker for our church," in which position the petitioner will be responsible for such tasks as "evangelism in economically depressed communities," providing "prayer and biblically-based personal counseling," and "training in Christian Education." states that the petitioner "shall receive no financial compensation for her services." The petitioner has primarily relied on room and board provided by her cousin. Before coming to the United States, the petitioner had worked for Interior Evangelistic Ministries Int. in Nigeria, but the record does not clarify whether she was a paid employee or an unpaid volunteer.

In response to the director's request for evidence that the petitioner "will not be solely dependent on supplemental employment or solicitation of funds for support," church officials have stated that the church "is unable at this time to support a missionary financially," although the church hopes "to eventually make this a paid position in the future." A weekly schedule indicates that the petitioner's missionary duties occupy 23 hours per week. The petitioner has submitted a letter from E-World Staffing.com, stating that "E-World Staffing.com remains interested in hiring" the petitioner, "at the starting rate of $8.50 per hour." The company's vice president of U.S. Operations is Al Royal, who is also the pastor of the church.

The above job offer letter is dated May 25, 2003. There is no evidence that the job offer existed on October 15, 2002 when the petition was filed. In this light, it appears that Al Royal offered the petitioner a paid job in response to the director's query regarding the petitioner's material support. A petitioner may not make material changes to a petition that has already been filed in an effort to make an apparently deficient petition conform to CIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169 (Comm. 1998), and *Matter of Katigbak*, 14 I&N Dec. 45 (Reg. Comm. 1971), which require that beneficiaries seeking employment-based immigrant classification must possess the necessary qualifications as of the filing date of the visa petition.

The director denied the petition, stating that the petitioner's part-time, unpaid work, and the petitioner's offer of future work under the same terms, do not amount to qualifying experience or a qualifying job offer. On appeal, Pastor Royal asserts that "beneficiary was a full-time religious worker for the entire 2-year period from October 2000 to October 2002," which contradicts the earlier assertion that the petitioner worked 23 hours a week for the church. In a separate letter, Pastor Royal states that "our Board met with [the petitioner] on 19 October, 2003 and agreed to hire her as a full-time missionary with a minimum of 40 hours per week." The additional hours of employment consist largely of door-to-door evangelism. In yet another letter, Pastor Royal states that the petitioner has "decided to offer the beneficiary . . . the sum of $1,500 per month for her services as a full-time missionary." The petitioner makes no mention, on appeal, of the prior job offer from E-World Staffing.com. These letters continue a pattern in which Pastor Royal has altered the terms of the job offer after the fact, in an effort to remedy deficiencies present at the time of filing. Pursuant to *Matter of Izummi*, this is not permissible. The petition must be approvable at the time of filing, and cannot subsequently be altered to conform to requirements. If the petitioner desires consideration of the new terms of employment, the proper forum would be a new petition, in which the job offer at the time of filing conforms to the pertinent requirements.

Beyond the director's findings, we note that the petitioner has submitted no documentation of the church's qualifying tax-exempt status, as required by 8 C.F.R. § 204.5(m)(3)(i). A church official has indicated "we are currently in the process of applying for our 501(c)(3) approval with the Internal Revenue Service."

ORDER: The appeal is rejected.